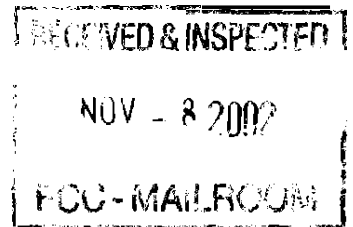


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)	
)	
Request for Waiver by)	
)	
High Bridge Board of Education)	File No. SLD-328078
High Bridge, New Jersey)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors of the)	
National Exchange Carrier Associations, Inc)	CC Docket No. 97-21 ✓

ORDER

Adopted: November 6, 2002

Released: November 7, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a request filed by High Bridge Board of Education (High Bridge), High Bridge, New Jersey, seeking a waiver of the Commission's rules governing the schools and libraries universal service support mechanism.¹ Specifically, High Bridge requests waiver of the filing deadline for Funding Year 2002 because of a misunderstanding with the Administrator.² For the reasons set forth below, we deny the High Bridge's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services. Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Administrator a completed FCC Form

¹ Letter from, Anthony Juskiewicz, High Bridge Board of Education, to Federal Communications Commission, filed May 20, 2002 (Waiver Request). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See Waiver Request. Previously, this funding period would be referred to as Funding Year 5. Funding periods are now described by the year in which the funding period starts. Thus the funding period which began on July 1, 2001 and ended on June 30, 2002, previously described as Funding Year 4, is now called Funding Year 2001. The funding period which began on July 1, 2002 and ends on June 30, 2003, previously described as Funding Year 5, is now called Funding Year 2002, and so on.

³ 47 C.F.R. §§ 54.501-54.503

470.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must submit a completed FCC Form 471 application to the Administrator.' The Commission's rules require that the applicant file the FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for in-window applicants.' The last day of the filing window for Funding Year 2002 was January 17, 2002.⁷

3. High Bridge started the application process ~~for~~ Funding Year 2002, but claims that it halted the process because of instructions from SLD. High Bridge filed its FCC Form 470 in September 2001, four months before the FCC Form 471 filing window closed.' High Bridge did not submit its FCC Form 471 until almost a month after the filing window had closed.' High Bridge claims that it delayed filing because SLD had told it not to send any documents to SLD while a Funding Year 2001 Service Provider Identification Number (SPIN) change issue was being resolved." The exact chronology of events is not clear from High Bridge's Waiver Request, but High Bridge states that it was in contact with SLD monthly about the SPIN change it requested in July 2001. Further, High Bridge states that SLD staff had told the applicant on not to contact the division again until it received a SPIN-change letter from SLD.¹¹ High Bridge claims that it understood this instruction to mean that no correspondence at all should be submitted—including the FCC Form 471 for the next funding year. High Bridge requests a waiver of the Funding Year filing window.

4. A waiver can be granted only if waiving the deadline is supported by a showing of good cause.¹² A deviation from a general rule is not permitted unless special circumstances warrant it and the deviation would better serve the public interest than strict adherence to the general rule.¹³ We have traditionally held applicants to a high standard for waivers, noting that ultimately it is the applicant who has responsibility for the timely submission of its application. We have held that misunderstanding does not relieve applicants of their responsibility to understand and comply with the Commission's rules and procedures.¹⁴ Furthermore, we have

⁴ 17 C.F.R. § 54.504(b)

⁵ 17 C.F.R. § 54.504(c)

⁶ 47 C.F.R. §§ 54.504(c), 54.507(g)

SLD website, What's New Archives (January 10, 2002)
<<http://www.sl.universalservice.org/whatsnew/012002.asp#011002b>>

⁸ FCC Form 470, High Bridge Board of Education, posted September 17, 2001

⁹ FCC Form 471, High Bridge Board of Education, filed February 13, 2002 (the electronic portion was submitted on February 13, 2002; the envelope containing the Block 6 Certifications and Signature pages and Item 21 Attachment was postmarked February 13, 2002).

¹⁰ Waiver Request.

¹¹ Waiver Request

¹² See 47 C.F.R. § 1;

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)

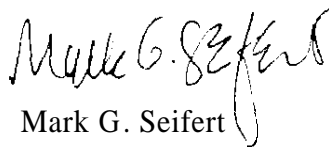
¹⁴ See *Request for Waiver by Dermott Special School District, et al, federal-Sfore Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-252777, CC Docket Nos. 96-45 and 97-21, Order. DA 02-642 (Conn. Car. Bur. rel. March 19, 2002); See also *Request for*

(continued...)

rejected arguments based upon claims that SLD staff provided the incorrect information to applicants.¹⁵ After reviewing the material before us, we conclude that High Bridge has failed to demonstrate the special circumstances upon which its Waiver Request can be granted.

5. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by High Bridge Board of Education, High Bridge, New Jersey, on May 20, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

(.. continued From previous page)

Waiver by art in contexts, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-262426, CC Docket Nos. 96-45 and 97-21, Order, DA 02-642 (Com. Car. Bur. rel. March 19, 2002) (denying waiver request in case involving employee illness).

¹⁵ See *Request for Review of the Decision of the Universal Service Administrator by Ruidoso Municipal School District Ruidoso, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd. 15547, n.10 (2000) (citing *In Re Applications of Mary Ann Salvatoriello*, 6 FCC Rcd 4705 (1991), citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990) (erroneous advice from a government employee has never been found to create estoppel against the Federal Government, particularly when the relief requested would be contrary to an applicable statute or rule)).